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MIKE SARIEDDINE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MIKE SARIEDDINE, an individual Plaintiff, vs. SONDER, LLC, a North Carolina limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case: 2:17-cv-3779 **COMPLAINT FOR** **1. Federal Trademark Infringement** **2. False Designation of Origin 15 U.S.C.** **3. Common Law Trademark Infringement** **4. California Statutory Unfair Competition** **5. California Common Law Unfair Competition** **DEMAND FOR JURY TRIAL**

Plaintiff, Mike Sarieddine ("Sarieddine" or "Plaintiff") by and through its undersigned counsel, states as follows for his complaint against Defendants Sonder, LLC (dba Conspiracy Liquids) ("Sonder") and Does 1 through 10, inclusive (collectively, the "Defendants") and alleges as follows:

I. INTRODUCTION

1. This action arises out of Defendants' intentional and willful decisions to ignore Sarieddine's federal and common law trademark rights in its Alien Vape e-

liquid products, and Defendants' unfair competition in violation of the Lanham Act and California law.

2. Since at least as early as May 2011, Plaintiff has manufactured and sold high quality electronic cigarette products to consumers under its federally registered ALIEN VAPE® trademarks.

3. Beginning in November 2014, Defendants began to market and sell e-liquid vaporizer products under the infringing brand name "Alien Blood."

4. Despite knowledge of Sarieddine's federal and common law trademark rights, Defendants continue to advertise and sell their e-liquid vaporizer products under the infringing name "Alien Blood".

5. Accordingly, due to Defendants' blatant and willful infringement, Sarieddine has no choice but to file this lawsuit seeking damages that it has suffered as a result of the Defendants' unfair competition and trademark infringement.

II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Sarieddine's Lanham Act claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1367, and 1338(a).

7. This Court has supplemental jurisdiction over Sarieddine's pendent state law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally interrelated with Sarieddine's federal claims and arise from a common nucleus of operative facts such that the administration of Sarieddine's state law claims with its federal claims furthers the interest of judicial economy.

8. This Court has personal jurisdiction over Defendants because they do substantial business and sales in this District, and advertise, distribute, offer for sale, and sell the infringing products in this District. Defendants have purposefully availed themselves and directed their business at opportunities in this District. Defendants have committed tortious acts in this District against Plaintiff, whose principal place of business is in this District.

9. Venue is proper in this District under 28 U.S.C. § 1391.

III. PARTIES

10. Plaintiff Mike Sarieddine is an individual residing in the county of Los Angeles, California.

11. Upon information and belief, Defendant Sonder, LLC is a North Carolina limited liability company with a business address of 163 Vance Crescent Dr., Mooresville, NC 28117-9136 and a registered address of 6135 Park South Drive Suite 510, Charlotte, NC 28210-100.

12. Plaintiff is ignorant of the true names of the other Defendants sued herein as Does 1-10 and, therefore, sues these Doe Defendants by such fictitious names. Additional Doe Defendants are likely to include, among others, additional managers, officers, members, and other individuals who authorized, condoned, directed, and/or participated in the decision(s) to have Defendant Sonder adopt and use the infringing Alien Blood trademark. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

13. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants was the agent and/or employee of the remaining Defendants and, at all times mentioned, acted within the course and scope of such agency and employment.

IV. FACTS COMMON TO ALL CLAIMS FOR RELIEF

Plaintiff's Successful Alien Vape® Brand and Trademarks

14. Since at least as early as May 2011, Plaintiff first began selling high quality e-cigarette products, and later e-liquid products and vaporizers, in California and other states, and has invested tremendous time and resources into marketing and promoting these goods under the trademark ALIEN VAPE®.

15. Plaintiff advertises its goods on its website at www.alienvape.com, among other forms of advertising and promotion.

16. The ALIEN VAPE® Marks are inherently distinctive, and have

developed widespread brand recognition among consumers in California and other states as the source of high-quality e-liquid products.

17. As a result of Plaintiff's high-quality products, extensive advertising and promotion of the brand, and continuous and widespread use in California and other states, the ALIEN VAPE® Marks are extremely strong, distinctive, and have acquired extensive and valuable goodwill with consumers as an identifier of superior quality e-liquid products.

18. Plaintiff owns two United States federal trademark registrations for the ALIEN VAPE® Marks:

- U.S. Trademark Registration No. 4997336 for the mark ALIEN VAPE® for "Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of propylene glycol; Electronic cigarette liquid (e-liquid) comprised of vegetable glycerin; Electronic cigarettes; Oral vaporizers for smokers" in International Class 34; and
- U.S. Trademark Registration No 4517249 for the mark ALIEN VAPE. VAPE JUST GOT REAL!® (and "alien head" design) for "Electronic cigarettes vaporizers for alternative smoking" in International Class 34 (collectively, the "ALIEN VAPE® Registrations")

19. The ALIEN VAPE® Registrations are prima facie evidence that the ALIEN VAPE® Marks are valid, and that Plaintiff is entitled to the exclusive use of the marks in commerce throughout the United States for the goods listed in the registrations.

20. Plaintiff also has extensive common law rights in the ALIEN VAPE® Marks due to his continuous use of the marks in commerce in California and in other U.S. states since at least as early as May 2011.

21. The ALIEN VAPE® Marks have become well-known with Plaintiff's customers, and have developed substantial goodwill and association in the mind of

the consumer, due to Plaintiff's extensive marketing, promotion, and use of the ALIEN VAPE® Marks for nearly six years. On the basis of the inherent distinctiveness of the ALIEN VAPE®, the public differentiates Plaintiff's products from others on the market.

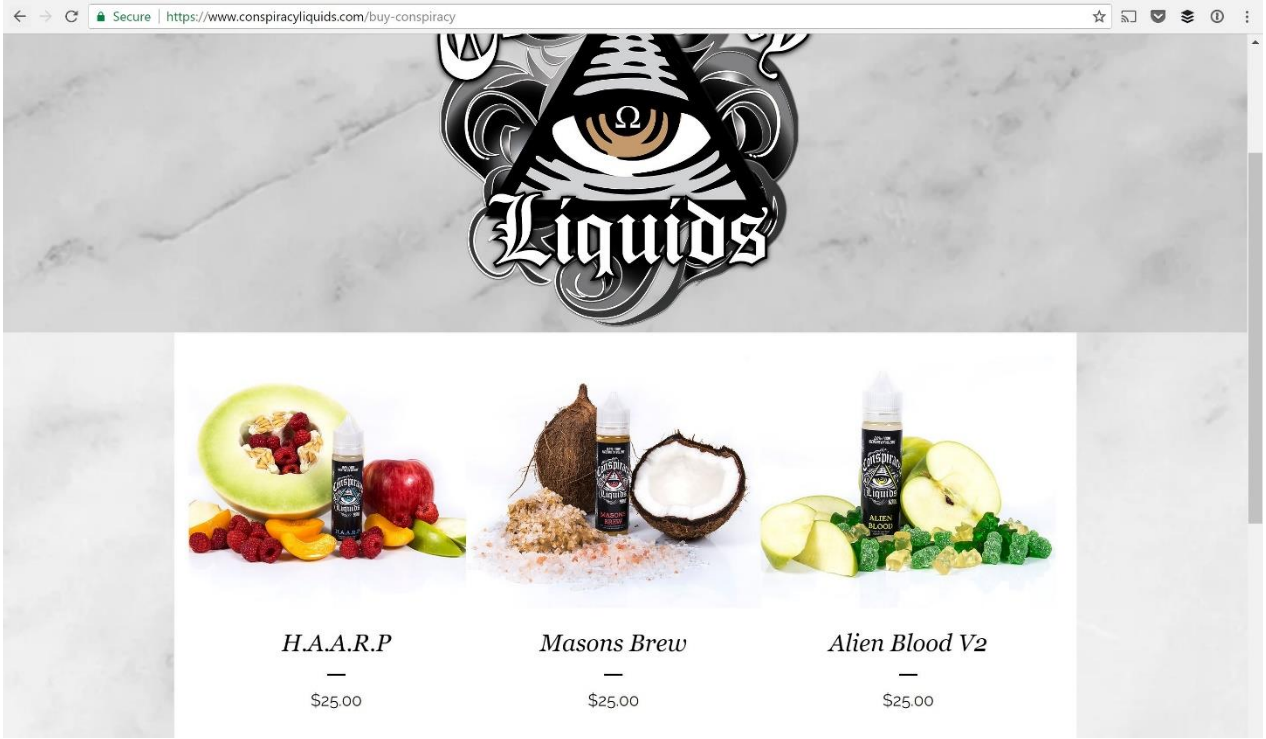
Defendants' Infringement of Plaintiff's Trademarks

22. Sometime around November 2014, Defendants began selling an e-liquid product using the brand name "Alien Blood" (the "Infringing Mark"), which is a highly similar trademark to Plaintiff's ALIEN VAPE® Marks.

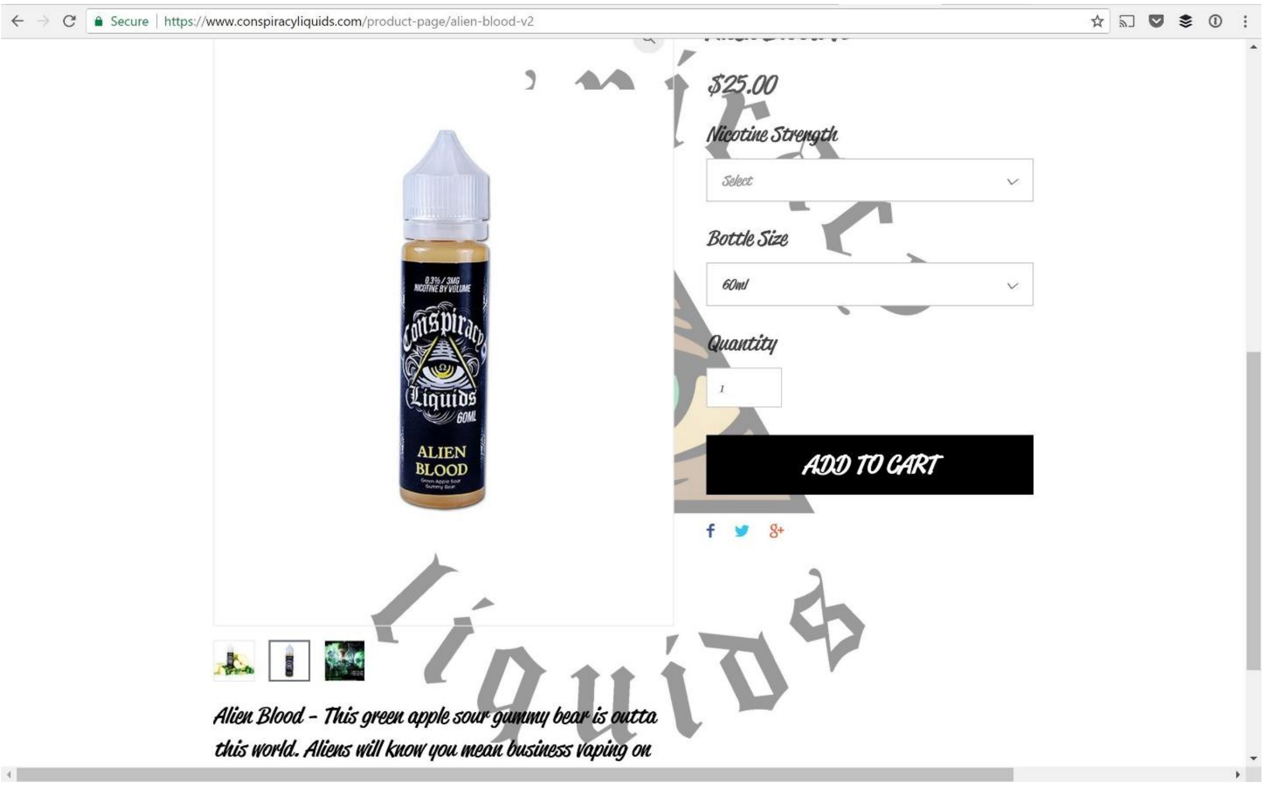
23. Plaintiff's marks and Defendants' Infringing Mark share the first and dominant term ALIEN, and are used for identical or highly-related vaping products, which are sold to the same types of consumers in the same channels of trade. Defendants adopted the Infringing Mark to compete directly and unfairly with Plaintiff's business and goods using a highly similar name.

24. On information and belief, Defendants advertised and continue to advertise their vaping products under the Infringing Mark on their website located at www.conspiracyliquids.com, as well as on other websites and social media web sites.

25. Below is a true and correct copy of a screenshot of Defendants' website advertising the infringing "Alien Blood" e-liquid product, located at http://www.conspiracyliquids.com/buy-conspiracy:


Secure | https://www.conspiracyliquids.com/buy-conspiracy
Liquids
H.A.A.R.P
$25.00
Masons Brew
$25.00
Alien Blood V2
$25.00

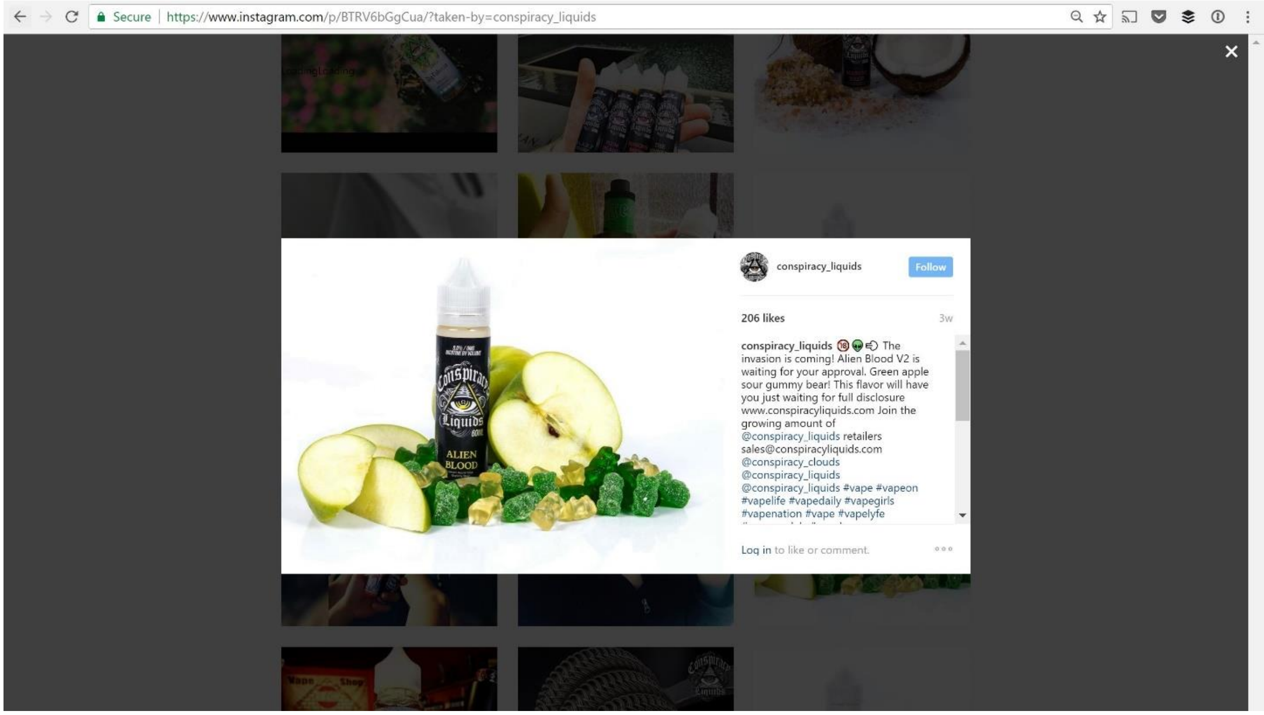
26. Below is a true and correct copy of a screenshot of Defendants' website product page for the infringing "Alien Blood" product, located at http://www.conspiracyliquids.com/product-page/alien-blood-v2:


Secure | https://www.conspiracyliquids.com/product-page/alien-blood-v2
$25.00
Nicotine Strength
Select
Bottle Size
60ml
Quantity
1
ADD TO CART
Conspiracy Liquids
ALIEN BLOOD
Alien Blood - This green apple sour gummy bear is outta this world. Aliens will know you mean business vaping on

27. Below is a true and correct copy of a screenshot of Defendants' Instagram photo from November 26, 2014, advertising the sale of the infringing "Alien Blood" e-liquid product, located at http://www.instagram.com/p/v16FIDGCHj/:

Secure | https://www.instagram.com/p/v16FIDGCHj/?taken-by=conspiracy_liquids
conspiracy liquids
novo mundo sucus
FIVE PREMIUM FLAVORS:
BERMUDA'S CRYSTAL
4TH DIMENSION
THE KENNEDY
33RD DEGREE
ALIEN BLOOD
TRY IT
conspiracy_liquids
Follow
41 likes
129w
conspiracy_liquids Our flavors are Aliens Blood, 4th Dimension, 33rd Degree, Bermudas Crystal, and The Kennedy #vapedna #vaperevolution #vapehead #vaperev #vapeworld #vape #vapelife #vapeusa #vaper #vapeaddict #eliquid #ejuice #liquids #liquidaddict #juicejunkies #juiceporn #cloudchaser #clouds #conspiracyliquids #conspiracy #premium
vapejoindo Vape On!
eastcoastboxmods Come check out the giveaway I'm taking part in with VapeCityChick!
nirvana_vapor vape on!
vvpor Nice pic!
Log in to like or comment.

28. Below is a true and correct copy of a screenshot of Defendants' Instagram photo from April 24, 2017, showing Defendants' recent and continued advertisement of the infringing "Alien Blood" e-liquid product, located at http://www.instagram.com/p/BTRV6bGgCua/:


Secure | https://www.instagram.com/p/BTRV6bGgCua/?taken-by=conspiracy_liquids
conspiracy_liquids
Follow
206 likes
3w
conspiracy_liquids The invasion is coming! Alien Blood V2 is waiting for your approval. Green apple sour gummy bear! This flavor will have you just waiting for full disclosure www.conspiracyliquids.com Join the growing amount of @conspiracy_liquids retailers sales@conspiracyliquids.com @conspiracy_clouds @conspiracy_liquids @conspiracy_liquids #vape #vapeon #vapelife #vapedaily #vapegirls #vapenation #vape #vapelyfe
Log in to like or comment.
Conspiracy
Liquids
ALIEN
BLOOD

29. On information and belief, Defendants adopted the highly similar Infringing Mark for the purpose of trading on Plaintiff's ALIEN VAPE® Marks and goodwill. As a result, any negative reports about Defendants could be, and may have already been attributed to Plaintiff, all to the Plaintiff's detriment.

30. These uses of the "Alien Blood" name constitute a blatant infringement of Plaintiff's registered ALIEN VAPE® Marks.

31. To this day, Defendants continue to advertise and sell e-liquid products using the infringing "Alien Blood" trademark.

32. Defendants must now answer for their infringing conduct, which will include an injunction barring all future sale or advertisement of the "Alien Blood" products, Plaintiff's actual damages, the disgorgement of 100% of Defendants' profits to Plaintiff, and enhanced damages for the Defendants' willful infringement.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement Under 15 U.S.C. § 1114)

33. The First Cause of Action is an action for trademark infringement under the trademark laws of the United States (Lanham Act), 15 U.S.C § 1114. Subject

matter jurisdiction over this Cause of Action is based upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

34. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

35. Plaintiff is the sole owner of the ALIEN VAPE® Marks, which are registered to Plaintiff on the Principal Register at the USPTO. These registrations constitute prima facie evidence that the ALIEN VAPE® Marks are valid; that they are owned by Plaintiff; and that Plaintiff has the exclusive right to use the ALIEN VAPE® Marks in commerce in connection with the goods specified in the ALIEN VAPE® Registrations.

36. Furthermore, Plaintiff has continuously used the ALIEN VAPE® Marks in commerce since at least as early as May 2011. Meanwhile, on information and belief, Defendants began their infringement of the ALIEN VAPE® Marks by using the ALIEN VAPE® Marks in commerce after the Plaintiff began using his marks. Therefore, Plaintiff clearly has priority of use of the ALIEN VAPE® Marks as against Defendants. As such, for at least this additional reason, Plaintiff is the owner of the ALIEN VAPE® Marks, and has the exclusive right to use the marks in commerce.

37. Defendants' infringement of the ALIEN VAPE® Marks, in the manner set forth above, supra, trades on the ALIEN VAPE® Marks and the goodwill associated therewith, and is likely to confuse and deceive the consuming public into believing that Defendants are associated with ALIEN VAPE® and/or Plaintiff.

38. The actions of Defendants complained of herein are likely to cause confusion, to cause mistake or to deceive others into erroneously believing that Defendants' goods are authorized by, licensed by, sponsored by, endorsed by, or otherwise associated with ALIEN VAPE® and/or Plaintiff. The likelihood of confusion is particularly strong because, inter alia, (i) the ALIEN VAPE® Marks are strong due to Plaintiff's extensive use of the marks since at least as early as

May of 2011 and therefore carry a high degree of consumer recognition; (ii) Plaintiff's mark ALIEN VAPE® and the designation used by the Defendants, "Alien Blood", are highly similar; and (iii) both the Defendants and Plaintiff use the marks in connection with identical or highly-related vaping products; and (iv) the Defendants and Plaintiff share the same marketing and trade channels.

39. In view of the foregoing, and on information and belief, the acts and conduct of the Defendants complained of herein constitute willful and deliberate infringement of Plaintiff's ALIEN VAPE® Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. 1114.

40. By reason of the foregoing, Plaintiff has been damaged and is being damaged by the Defendants' willful infringement of the ALIEN VAPE® Marks. Therefore, pursuant to 15 U.S.C. § 1117(a), Plaintiff is entitled to recover at least (i) the Defendants' profits gained from their infringement; (ii) Plaintiff's damages suffered due to the Defendants' infringement; and (iii) Plaintiff's costs in this action.

41. Moreover, Plaintiff has been and will continue to be, irreparably injured by the continued infringing acts of the Defendants, until and unless such acts are enjoined. Plaintiff has no adequate remedy at law. Therefore, in addition to the foregoing, Defendants should be preliminarily and permanently enjoined from their infringing acts under 15 U.S.C. § 1116.

SECOND CAUSE OF ACTION

(False Designation of Origin Under 15 U.S.C. § 1125(a))

42. The Second Cause of Action is an action for unfair competition, false designation of origin and false or misleading descriptions and representations, arising under §43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Subject matter jurisdiction over this Cause of Action is based upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(b).

43. Plaintiff incorporates by reference the allegations in the preceding

paragraphs of this Complaint.

44. Defendants' use of the infringing "Alien Blood" mark has resulted in and continues to result in confusion, mistake, and deception among consumers as to the source of origin of Plaintiff and Defendants' products.

45. By having actual and constructive knowledge of Plaintiff's rights and trademarks and continuing to use the Infringing Mark, Defendants have, without consent of Plaintiff, willfully violated 15 U.S.C. § 1125(a).

46. Defendants have done and are continuing to do so with the intent to unfairly compete against Plaintiff, to trade upon Plaintiff's reputation and goodwill by causing confusion and mistake among consumers and the public, and to deceive the public into believing that the e-cigarette products being sold by the Defendants are associated with, sponsored by, or approved by Plaintiff, when they are not.

47. Defendants' aforementioned acts and statements have caused damages to Plaintiff in an amount to be proven at trial.

48. Plaintiff is also being irreparably injured. Such irreparable injury will continue unless Defendants are permanently enjoined by this Court from further violation of Plaintiff's rights, for which Plaintiff has no adequate remedy at law.

THIRD CAUSE OF ACTION

(California Statutory Unfair Competition, Cal. Bus. & Prof. Code § 17200)

49. The Third Cause of Action is an action for unfair competition under California Business and Professions Code §§ 17200 and 17500, et seq. Subject matter jurisdiction over this Cause of Action is founded upon supplemental jurisdiction under 28 U.S.C. § 1367.

50. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

51. By virtue of the acts complained of herein, Defendants have intentionally caused a likelihood of confusion among consumers and the public and have unfairly competed with Plaintiff in violation of Cal. Bus. & Prof. Code § 17200, *et*

seq.

52. Defendants' acts constitute unlawful, unfair, malicious or fraudulent business practices, which have injured and damaged Plaintiff.

53. As a direct and proximate result of Defendants' acts, Plaintiff has suffered and will suffer great harm in an amount to be determined at trial. Plaintiff has also been irreparably injured. Plaintiff will continue to be irreparably damaged unless Defendants are enjoined from further committing unfair and unlawful business practices against Plaintiff.

FOURTH CAUSE OF ACTION

(Common Law Trademark Infringement)

54. The Fourth Cause of Action is an action for trademark infringement under the common law of the state of California. Subject matter jurisdiction over this Cause of Action is founded upon supplemental jurisdiction under 28 U.S.C. § 1367.

55. Plaintiff incorporates by reference the allegations in the preceding paragraphs of this Complaint.

56. Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Plaintiff's common law trademark rights.

57. Plaintiff is being irreparably injured. Such irreparable injury will continue unless Defendants are permanently enjoined by this Court from further violations of Plaintiff's rights.

FIFTH CAUSE OF ACTION

(California Common Law Unfair Competition)

58. The Fifth Cause of Action is an action for unfair competition under the common law of the state of California. Subject matter jurisdiction over this Cause of Action is founded upon supplemental jurisdiction under 28 U.S.C. § 1367.

59. Plaintiff incorporates by reference the allegations in the preceding

paragraphs of this Complaint.

60. Defendants have caused a likelihood of confusion among the purchasing public in this District and elsewhere, thereby infringing Plaintiff's trademark rights, in violation of the common law of the State of California.

61. Plaintiff is being irreparably injured. Such irreparable injury will continue unless Defendants are permanently enjoined by this Court from further violations of Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a judgment against Defendants and prays that this Court grants:

a. Permanent injunctive relief against all Defendants and their parents, subsidiaries, affiliated companies, and their respective officers, directors, employees, and agents from using the ALIEN VAPE® Marks, any marks likely to cause confusion with the ALIEN VAPE® Marks including "alien Blood", and selling any "Alien" or "Alien Blood" branded products;

b. An accounting of, and disgorgement of, any and all profits derived by Defendants and all damages sustained by Plaintiff, trebled, by virtue of the Defendants' infringing and illegal acts, in an amount to be determined at trial;

c. Prejudgment interest, the costs of this action, witness fees, and Plaintiff's attorneys' fees, pursuant to 15 U.S.C. § 1117, 1118, and California Civil Code § 3288;

d. Punitive, enhanced, treble, and exemplary damages for the Defendants' acts of unfair competition and willful infringement;

e. Other economic and consequential damages in an amount to be determined at trial;

f. The destruction of all materials bearing infringements of Plaintiff's ALIEN VAPE® Marks;

g. That the Defendants be held jointly and severally liable;

h. A judgment that Defendants have unfairly competed with Plaintiff and violated the trademark laws of California and the United States; and

i. Grant to Plaintiff such further relief as may be equitable and proper.

Respectfully submitted,

By: _/s/ Stephen McArthur_

Dated: May 18, 2017

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this lawsuit.

By: *_/s/ Stephen McArthur_*
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Dated: May 18, 2017